

## **REMARKS**

Claims 1-30 are currently pending in this application. Claims 18, 23, 25, 28 and 30 have been amended. No new matter has been added. Claims 1-30 will be pending after entry of this amendment. Reconsideration of the claims is respectfully requested.

### **Examiner Interview**

The Applicants' representatives (John Gatz and Jason Kray) would like to thank Examiner Larkin for the interview of March 4, 2009. During the interview, the Applicants' representatives and the Examiner discussed amending claims 18, 23 and 25 to recite functionality.

### **Allowed Claims**

The Applicants thank the Examiner for allowing claims 1-17 and 27.

### **35 U.S.C. § 112 Rejections**

Claims 28 and 30 were rejected due to a lack of antecedent basis for the phrase "said at least one test region." These claims have been amended to recite "at least one test region." The Applicants respectfully request that the rejection of claims 28-30 be withdrawn.

### **35 U.S.C. § 102 Rejections**

Claims 18-26 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,120,420 ("Nankai"). Claims 25-26 are also rejected under 35 U.S.C. § 102(b) as being anticipated by International Publication No. WO 03/012421 ("Yoshida"). The Applicants will individually discuss each of these references and the claims that were rejected thereby.

### **WO 03/012421 to Yoshida**

Independent claim 25 recites, *inter alia*, first and second vents having first and second sample guide edges opposing each other "above at least one of said central portions of said first and second electrodes" and "said first and second sample guide edges guiding said fluid sample along a fluid pathway of said sample cavity." Yoshida does not disclose, teach or suggest at least these features. Rather, Yoshida discloses through-holes 51-53 located at an end of a sample cavity 60 such that fluid flows to the testing region (i.e., reactor 36) in the sample cavity 60, before reaching the thorough-holes 51-53. See, *e.g.*, FIG. 2 of Yoshida.

Thus, no portion of through-holes 51-53 in Yoshida provides the sample guide edge(s) as recited in independent claim 25.

The Final Office Action states that “Applicants’ argument with respect to Yoshida et al. . . . may be true; however, the operability of the guide edges as argued by Applicants does not matter since the functionality of the guide edges of the first and second vents is not present within the limitations recited in claims 25 and 26.” Final Office Action, Page 6. To expedite prosecution, the Applicants have amended independent claim 25 to recite “said first and second sample guide edges guiding said fluid sample along a fluid pathway of said sample cavity.” Thus, independent claim 25 now recites the functionality of the guide edges suggested in the Office Action. See Final Office Action, Page 6.

Therefore, independent claim 25 is not anticipated by or rendered obvious over Yoshida. Claim 26 depends directly on claim 25 and is not anticipated by or rendered obvious over Yoshida for at least the reasons discussed in connection with claim 25. Thus, claims 25-26 should be in a condition for allowance.

U.S. Patent No. 5,120,420 to Nankai

The Applicants have amended independent claims 18, 23 and 25 to recite functionality, which is not disclosed in U.S. Pat. No. 5,120,420 to Nankai et al. (“Nankai”). See Final Office Action, Page 7. Specifically, Applicants have amended independent claims 18, 23 and 25 to recite the functionality of the guide edges or vent edges as follows:

- Claim 18 now recites, *inter alia*, “wherein said first vent edge and said second vent edge guide said fluid sample along said fluid pathway”.
- Claim 23 now recites, *inter alia*, “wherein said first vent edge and said second vent edge guide said fluid sample along said fluid pathway”.
- Claim 25 now recites, *inter alia*, “said first sample guide edge and said second sample guide edge guiding said fluid sample along a fluid pathway of said sample cavity”.

As discussed in the Applicants’ response to the previous Office Action, FIG. 12 of Nankai discloses discharge ports 11-13 located at an end of a space 8 such that fluid flows to the testing region (i.e., measurement electrodes 41-43) in the space 8 before reaching discharge ports 11-13. Thus, no portion of discharge ports 11-13 in Nankai provides the

sample guide edge(s) as recited in claim 25. Additionally, no portion of discharge ports 11-13 in Nankai guides the fluid sample along the fluid pathway such that fluid passes the first vent before passing the second vent as recited in claims 18 and 23.

In FIG. 13, Nankai discloses an introducing port 10, discharge ports 11, 12 and a spacer that forms spaces 81, 82. The fluid in the embodiment of FIG. 13 enters the testing region (measurement electrodes 41 and 42) through the introducing port 10. Thus, no portion of discharge ports 11, 12 of FIG. 13 in Nankai provides the sample guide edge(s) as recited in claim 25. Additionally, no portion of discharge ports 11, 12 of FIG. 13 in Nankai guides the fluid sample along the fluid pathway such that fluid passes the first vent before passing the second vent as recited in claims 18 and 23.

Therefore independent claims 18, 23 and 25 are not anticipated by or rendered obvious over Nankai. Claims 19-22, 24 and 26 depend either directly or indirectly on claims 18, 23 and 25 and are not anticipated by, or rendered obvious over Nankai for at least the reasons discussed in connection with claims 18, 23 and 25. Thus, dependent claims 19-22, 24 and 26 should be in a condition for allowance.

### **CONCLUSION**

The Applicant submits that the claims are in a condition for allowance and action toward that end is earnestly solicited. It is believed that no other fees are due; however, should any additional fees be required (except for payment of the issue fee), the Commissioner is authorized to deduct the fees from Nixon Peabody LLP Deposit Account No. 50-4181, Order No. 247082-00115USPX.

Respectfully submitted,

Date: March 5, 2009

/John C. Gatz, Reg. No. 41,774/

John C. Gatz  
Reg. No. 41,774  
NIXON PEABODY LLP  
161 North Clark Street  
Suite 4800  
Chicago, Illinois 60601  
312-425-3900 - telephone  
312-425-3909 - telefax

ATTORNEY FOR APPLICANTS